

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

|                           |   |                      |
|---------------------------|---|----------------------|
| UNITED STATES OF AMERICA, | ) |                      |
|                           | ) |                      |
| Plaintiff,                | ) | 4:94CR3043           |
|                           | ) |                      |
| v.                        | ) |                      |
|                           | ) |                      |
| LEE WARN SCOTT,           | ) | MEMORANDUM AND ORDER |
|                           | ) |                      |
| Defendants.               | ) |                      |
| _____                     | ) |                      |

Scott has filed a motion for the appointment of counsel (filing no. 217) contending that he is entitled to a sentence reduction because of the amendments to the “crack” Guidelines that will become effective November 1, 2011. I will deny the motion because Scott is not entitled to a sentence reduction.

At sentencing, Scott’s total offense level was 44 and his criminal history category was II. (Filing no. 67 (Sealed Retroactive Sentencing Worksheet).) He was held accountable for 783 grams of crack. (*Id.*) His base offense level was increased by 2 for using a knife in the commission of a drug offense, by 4 points for being an organizer and leader, and by 2 points for obstructing justice. (*Id.*) His Guidelines range was life, but that range was capped by the statutory maximum of 240 months. (*Id.*) He was sentenced to 240 months in prison.

While the new crack Guidelines would reduce Scott’s base offense level to 32, his Guidelines sentencing range would still be far in excess of the 240 month sentence he received. That is, his total offense of 40 and his criminal history category of II would produce a Guidelines range of 324 to 405 months in prison. Therefore, he is not entitled to any relief because the change in the base offense level would not cause a change in the Guidelines prison sentence applicable to Scott. *See* U.S.S.G. § 1B1.10(a)(2)(B) (“A reduction in the defendant's term of imprisonment ... is not

authorized under 18 U.S.C. § 3582(c)(2) if- . . . an amendment listed in subsection (c) does not have the effect of lowering the defendant's applicable guideline range.”).

IT IS ORDERED that the Motion for Appointment of Counsel (filing no. 217) is denied. In addition to providing copies to Scott and the prosecutor, the Clerk shall provide Kelly Nelson, Supervising United State Probation Officer, and David Stickman, Federal Public Defender, with a copy of this Memorandum and Order.

DATED this 13<sup>th</sup> day of September, 2011.

BY THE COURT:

*Richard G. Kopf*  
United States District Judge